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SIPDIS
SENSITIVE

STATE PLEASE PASS TO AF/S AND AF/EPS Gabrielle Mallory
USTR FOR BILL JACKSON AND CONSTANCE HAMILTON
DEPT OF COMMERCE FOR J.DIEMOND AND KEVIN BOYD
DEPT OF TREASURY FOR ANTHONY IERONIMO

E.O. 12958: N/A

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SUBJECT: NAMIBIA: 2009 AGOA ELIGIBILITY REVIEW SUBMISSION

REF: A. STATE 97769

¶1. (SBU) Summary: This cable is the AGOA Eligibility Review submission for Namibia. Responses are keyed to paragraph 3 of reftel. End Summary.

Country: NAMIBIA
Current AGOA Status: Eligible

¶13. (SBU) Country Background Summary:

Namibia has a population of approximately 2.1 million (projected). GNI in 2008 was \$8.88 billion; 2008 GNI per capita was \$4,200. Namibia's formal economy produces most of its wealth, although traditional subsistence agriculture (mainly in the north) supports most of its labor force. Independent since 1990, Namibia maintains a functioning democracy based on a modern, liberal constitution. In November 2004, the nation elected then Minister of Lands, Resettlement and Rehabilitation Hifikepunye Pohamba as the new President, succeeding the country's founding father and first democratically elected President, Sam Nujoma. This year's Presidential and National Assembly elections are scheduled for November 28-29. Namibia's greatest challenges are to bring the majority of Namibians disadvantaged by apartheid into the economic mainstream while addressing the challenge of HIV/AIDS. In July 2008, the Namibian government and Millennium Challenge Corporation (MCC) signed a \$ 304 million grant agreement. The National Assembly ratified the compact in November 2008, and it entered into force in September 2009. The five-year compact will help strengthen access to and quality of Namibia's education and training sector, increase productivity of farm enterprises in communal rural areas and promote growth in Namibia's tourism industry. Namibia has a developed infrastructure. Over half of the country's export earnings come from diamonds and other mineral products including copper, zinc, and uranium. Namibia is also a significant exporter of fish and fish products. Namibia's excellent conservation policies ensure the protection of its fragile ecosystem and abundant wildlife.

¶14. (SBU) Section I. Market Based Economy/ Elimination of Trade Barriers

¶1A. Major Strengths Identified

- The economy is modern and market-based, incorporating a rules-based trading system.
- The Foreign Investment Act guarantees foreign investors national treatment, fair compensation in the event of expropriation, international arbitration of disputes between investors and the Government, the right to remit profits, and access to foreign exchange.
- The legal system protects and facilitates acquisition and disposition of property rights.

- Registration of patents, trademarks and designs is administered by the Registrar of Companies, Patents and Trademarks.

- The Namibian Society for Composers and Authors of Music (NASCAM) established in 1994 in terms of the Copyright and Neighboring Rights Protection Act administers and protects musical works.

- A second copyright organization, known as the Namibian Reproduction Rights Organization (NAMRRO) was launched on 27 March 2008. NAMRRO represents the rights of authors and publishers of literary, artistic and dramatic works.

- The transportation infrastructure is well developed and there is a favorable business climate.

- Namibia was ranked 66 out of 183 countries in the 2010 World Bank Group's Doing Business Report. Namibia ranked fourth amongst Sub-Saharan African countries.

- Namibia has responsible economic policies, institutional capacity, and sound banking and financial management practices.

- As a member of the Southern African Customs Union (SACU) and host of the SACU Secretariat, Namibia is an enthusiastic participant in the implementation of the U.S.-SACU Trade, Investment and Development Cooperation Agreement (TIDCA) which was signed in July 2008.

- The government is working to improve service delivery and efficiency through decentralizing sector management.

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- The Government has initiated projects to increase the supply of electricity in response to increased demand in Namibia and the sub-region.

I.B. Major Issues/Problems Identified

- Income distribution inequalities in Namibia, as measured by the Gini Coefficient, are among the worst in the world. Namibia's Gini Coefficient is 0.6. Aggregated macroeconomic statistics mask huge disparities in wealth and income between different populations.

- Although the government has studied various options for privatization of parastatals and has frequently stated its commitment to instituting provisions for private investment in these organizations, privatization remains slow with almost no active progress.

- The government retains ownership of various assets, including power, telecommunications, transport, and water utilities. Many operate as commercialized entities, operating as businesses independently of subsidies from the national budget. Power and telecommunications parastatals are among Namibia's most profitable companies and pay dividends to the government. There are some parastatals, however, that are draining subsidies from the national budget, such as Air Namibia. Only a limited number of the 41 recognized parastatals produce annual reports on a regular basis.

- Persistent levels of poverty, unemployment, and HIV/AIDS remain the most challenging issues for Namibia. Namibia's adult HIV prevalence rate is approximately 15 percent, according to UNAIDS.

- There is a serious shortage of skilled and specialized workers, especially in the science, engineering and health sectors.

- While Namibia still ranks high amongst Sub-Saharan African countries in the World Bank Group's Doing Business Report, it slipped on 9 of 10 sub-indicators in the report and dropped 12 places overall from 54 to 66 out of 183. According to the report, Namibia ranks 151 out of 183 countries for Trading Across Borders. Import/Export documentation requirements are a leading factor in why Namibia lags behind even its regional peers.

- There are often long delays in the processing of work permit applications.
- Increases in demand for electricity and water that may outstrip supply in the short-term which could jeopardize development projects.
- While inflation still remains moderately high (above 7 percent), 2009 saw a sharp decrease from 2008 levels which eclipsed 12 percent. This decrease was triggered mainly by the global economic slowdown and measures introduced by the central bank to control inflation (primarily the reduction of the REPO rate).
- Approximately 40 percent of the Namibian government's revenues are derived from the SACU revenue pool. A steep drop in SACU revenues in 2009 has widened the Namibian government's budget deficit.

15. (SBU) Section: II. Political Reforms/Rule of Law/Anti-Corruption

IA. Major Strengths Identified

- Freedom House's Freedom in the World index ranks Namibia as "Free" (Ranking: 2).
- Several elections since independence have been accepted domestically and by the international community as reflecting the will of the people.
- The constitution provides for an independent judiciary and the government respects this in practice.
- Rights to due process, a fair trial, and equal protection under the law are well established, although the right to a fair trial is limited somewhat in practice by long delays in hearing cases in the regular courts and the uneven application of constitutional protections in the traditional system.
- Anti corruption legislation and institutions have been established to combat corruption. An Anti-Corruption Commission, launched in January 2006, investigates instances of corruptions and refers them to the Office of the Prosecutor General for prosecution. Other anti-corruption institutions include the Office of the Ombudsman, the State-Owned Enterprises Governance Council, and the Office of

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the Auditor General.

- Opposition parties are able to register and participate in elections.

IB. Major Issues/Problems Identified

- A large court backlog, lengthy pretrial detention, and lengthy delays during trials remain problems.
- The law prohibits corruption, and the government has shown improvement in addressing the problem, but officials continued to engage in corrupt practices. The World Bank's Worldwide Governance Indicators reflected that corruption was a problem.
- In May, the government implemented the Financial Intelligence Act and the Prevention of Organized Crime Act, paving the way for authorities to monitor and prosecute money laundering activities and organized crime, as well as impose forfeiture measures on the proceeds of crime. The new laws are expected to bolster efforts to combat money laundering and its predicate financial crimes, such as tax evasion, false accounting, and corruption.
- Over the past three years Namibia has slipped to 61 out of the 180 countries on Transparency International's Corruption Perception Index. In 2006, Namibia was 55, and in 2007 it ranked 57th.
- Media practitioners, civil society, political commentators and other persons criticized the passing of a new Communications Bill, which contains a clause that allows the intelligence services to intercept phone calls and short message service (SMS), as well as to

monitor e-mails and internet usage with authorization from any magistrate. Many had argued that interception should only be authorized by the judge president of the High Court. Opponents called the law an invasion of privacy and a violation of the right to freedom of expression.

- Although to a lesser extent than 2008, opposition political parties still faced harassment when organizing in some areas of the country by ruling party supporters.

I6. (SBU) Section III. Poverty Reduction

IA. Major Strengths Identified

- The government recognizes the importance of economic growth to poverty reduction and actively encourages inward foreign investment. Government officials have praised AGOA for creating opportunities for value-added manufacturing.

- In July 2008, the government and MCC signed a \$304.5 million poverty reduction grant. The Namibian National Assembly ratified the compact in November 2008, and it entered into force in September 2009. The MCA compact will support the education and training sector, increase productivity of farm enterprises in communal rural areas and promote growth in Namibia's tourism industry.

- The government continues to encourage black economic empowerment (BEE) partnerships, many in joint ventures with foreign investors, to increase economic participation of historically disadvantaged Namibians. The government has been criticized, however, for its failure to implement a formal BEE policy.

- Namibia has adopted a fiscally prudent and balanced macroeconomic approach to addressing poverty.

- In the 2009/2010 budgetary year, 9.6 percent of total expenditures were for the health and social services sector and 21.5 percent were for education.

- The 2009/2010 budget also made provision for an increase in the number receiving social grants.

- Growth and poverty reduction are central to the government's goals and have been included in all development policy documentation, including the government's long-term development plan, Vision 2030.

- The government's Drought Relief Program continues to provide free food rations to a considerable number of people.

- The government recognizes the needs of the micro-enterprise sector and is addressing them through policy and legislation to enable more coordinated service delivery and access to credit needed by the large section of the population attempting to enter the formal sector.

- In August, the Bank of Namibia granted a provisional banking

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license to FIDES Bank Namibia, the first micro-finance bank in the history of Namibia.

- In 2007, the government negotiated a deal with De Beers which will ensure supply of Namibian rough diamonds to local diamond cutting and polishing factories. This has resulted in a major boost for the diamond cutting and polishing sector.

- The government continues to support the state-owned national energy utility's (Nampower) infrastructural development for power generation to ensure security of electricity supply.

- The government allocated substantial resources for the upgrade of airport, roads and railway facilities over the medium term.

IB. Major Issues/Problems Identified

- A 2004 Namibia Labor Force Survey determined that chronic

unemployment exceeds 36 percent. The rate of female unemployment is higher than that of men.

- After becoming AGOA eligible in 2000, Namibia attracted over \$300 million in investment and created nearly ten thousand new jobs in the textile and apparel industry. In May 2008, the Malaysian company Ramatex permanently closed its operations, claiming operational losses.

- Some of the factors that contributed to the closure of two apparel companies include low worker productivity, ongoing labor disputes, transportation delays, strikes, poor public relations, and environmental issues.

- HIV/AIDS threatens to undermine economic growth and social cohesion. The government recognizes the severity of the problem, and has launched serious counter programs, many in close coordination with USG agencies. Namibia is one of 15 focus countries benefiting under the President's Emergency Plan for AIDS Relief.

- Although the government still lacks an official BEE policy, BEE schemes in general have come under fire for benefiting a select few elites rather than serving as a tool for empowerment.

I7. (SBU) Section IV. Workers' Rights/Child Labor/Human Rights

IA. Major Strengths Identified

- The Constitution provides for freedom of association, including freedom to form and join trade unions and the government respects that right in practice.

- Internationally recognized worker rights are protected and respected in the 2007 Labor Act. Forced or bonded labor by adults and children is prohibited.

- The government is working with the ILO to harmonize the work of its Labor Law Courts with other similar courts in the southern Africa region.

- Namibia has ratified 10 of the International Labor Conventions including Convention 182 on the Worst Forms of Child Labor.

- The government began to implement recommendations emanating from the National Initiative to Eliminate Exploitative Forms of Child Labor.

- The government generally respects the rights of its citizens, although there were problems in several areas.

- The government has made progress in improving prison conditions, although conditions at police detention centers continue to raise serious concerns.

- The legislature has passed laws requiring more stringent penalties for rape and child abuse.

- In recent years, there has been significant improvement in the attention paid to women's issues and the rights of the disabled.

- The Prevention of Organized Crime Act enacted in November 2004, which entered into force in 2009, specifically prohibits trafficking in persons. The Government conducted a nationwide baseline study to assess the extent of the problem.

- A new Labor Act of 2007 will come into force on November 1, 2008, It includes conciliation and arbitration provisions, and fixed

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timelines for reaching settlements.

IB. Major Issues/Problems Identified

- While workers have the right to form and join trade unions, most unions are affiliated with the ruling party.

- There are a small number of independent unions.
- The right to strike is limited to disputes involving specific workers' interests (e.g., pay raises). Unions cannot legally strike on behalf of terminated employees.
- Labor disputes have taken up to three years to resolve. Knowledgeable sources within the employment and labor community estimate there are more than 800 cases awaiting resolution in Labor District Courts.
- No statutory minimum wage law exists, although three labor sectors (construction, security, farm workers) have negotiated minimum wage agreements..
- Child labor continues to be problem, particularly on communal farms and in the informal sector.
- Government enforcement of labor provisions can be inconsistent. Some foreign companies have been publicly criticized for engaging in unfair competition by not following safety and compensation standards, especially in the construction sector.
- There have been some reported instances of security forces assaulting or otherwise mistreating citizens during arrest or in detention.
- Sub-standard conditions and overcrowding in prisons and police detention centers remain challenges.
- Racial and ethnic discrimination, especially in remote rural areas where indigenous people often are unaware of their rights, continues.
- Violence against women and children, including rape and child abuse, continues to be a problem, as well as discrimination against women.
- A baseline assessment conducted by the government confirmed that Namibia is a source and destination country for trafficked children; however, the magnitude of this problem is unknown. Press reports and civil society organizations indicate that child prostitution is not uncommon.

¶8. (SBU) Section V. International Terrorism/U.S. National Security

¶A. Major Strengths Identified

- Although the Parliament has not yet enacted an anti-terrorism bill (one has been circulating since 2003), the Namibian Government has been receptive to U.S. counter-terrorism concerns and has pledged cooperation on intelligence sharing, including the exchange of information on suspicious financial flows. The Namibian Government regularly acts on additions to the UN 1267 Sanctions Committee list.
- Pursuant to UNSCR 1373, the Namibian Government has taken certain steps to prevent and suppress terrorism, including signing the International Convention for the Suppression of the Financing of Terrorism in November 2001, and becoming party to the 1979 Convention on the Physical Protection of Nuclear Material in March 2002 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in July 2004.
- There are no legal impediments to the prosecution of terrorists in Namibia.

- - The Financial Intelligence Act (FIA) of 2007 (developed in consultation with U.S. Treasury, the IMF and UN) came into force in April. The legislation is administered through the newly established Financial Intelligence Centre (FIC) at the Bank of Namibia. The center has anti-terrorist financing responsibilities. The U.S. Department of Treasury provided technical assistance to help establish the center and to train law enforcement officials in financial investigation techniques.

¶B. Major Issues/Problems Identified

- Progress in implementing UNSCR 1373 has been slow; important

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legislation is still pending. Although Namibia has drafted a Combatting of Terrorist Activities Bill which will criminalize terrorist financing, that is, the raising, providing, or use of funds, whether from a legal or illegal source, for terrorist purposes. The Bill does not, however, provide for the liability for legal persons which are used to facilitate terrorist financing or terrorist activities. Furthermore, there is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons. Namibia has also made little progress in becoming party to the 12 international conventions and protocols relating to terrorism. To date, Namibia has signed only three of the 12 and acceded to two.